

REMARKS

Status of the Claims

Claims **1-5, 9-12, 14, 16, 17, 20, 23, 26-28, 33, 35, 37, 40, 42, 43, 46,** and **49-55** were presented for examination. In the Office Action, claims 49-55 were rejected under 35 USC 112, second paragraph as allegedly indefinite. Claims 1-5, 9-11, 26-28 and 33 were rejected under 35 USC 102(e) as allegedly anticipated by U.S. patent 6,671,338 to Gamal *et al.* (hereinafter “Gamal”). Claims 12 and 35 were rejected under 35 USC 103(a) as allegedly unpatentable over Gamal in view of U.S. patent 6,317,612 to Farsakh (hereinafter “Farsakh”). Claims 49-55 were rejected under 35 USC 103(a) as allegedly unpatentable over Gamal in view of U.S. patent 6,771,723 to Davis *et al.* (hereinafter “Davis”). Claims 14, 16, 17, 19, 20, 23, 37, 40, 42, 43 and 46 stand provisionally rejected under nonstatutory obviousness-type double patenting in view of claims 13, 16, 15, 17, 19, 31, 33, 16, 35 and 37 respectively of Applicants’ co-pending application No. 09/788,890.

In this Response, claims 1-5, 9-12, 14, 16, 17, 20, 23, 26-28, 33, 35, and 49-55 are cancelled without prejudice. Upon entry of this Response, claims **37, 40, 42, 43,** and **46** will be presented for examination.

35 USC § 112 Rejection: Claims 49-55

Applicants cancel without prejudice claims 49-55.

35 USC § 102 Rejection: Claims 1-5, 9-11, 26-28, and 33

Applicants cancel without prejudice claims 1-5, 9-11, 26-28 and 33.

35 USC § 103 Rejection: Claims 12, 35, and 49-55

Applicants cancel without prejudice claims 12, 35, and 49-55.

Nonstatutory Double Patenting Rejection: Claims 37, 40, 42, 43, and 46

In the Office Action, claims 37, 40, 42, 43 and 46 were provisionally rejected under nonstatutory double patenting in view of claims 31, 33, 16, 35 and 37 of Applicants’ copending application No. 09/788,890.

Applicants file herewith a Terminal Disclaimer to overcome the double-patenting rejection. Since the provisional double patenting rejection is the only rejection remaining against the pending claims of the application and a Terminal Disclaimer if filed herewith, Applicants submit that claims 37, 40, 42, 43 and 46 should be allowed in accordance with MPEP 804 I B 1.

CONCLUSION

In view of the above, Applicant submits that presently pending claims **37, 40, 42, 43,** and **46** are in condition for allowance and early indication thereof is respectfully requested. If the Examiner believes a phone call will expedite prosecution of this case, the Examiner is invited to call the undersigned at 617 248-5143.

Respectfully submitted,
CHOATE, HALL & STEWART LLP

Date: June 2, 2009

/Sam Pasternack/
Sam Pasternack
Registration No. 29,576

CHOATE, HALL & STEWART LLP
Intellectual Property
Two International Place
Boston, MA 02110
Phone: (617) 248-5000
Fax: (617) 502-5002